

Internal Revenue Service
memorandum

CC:TL-N-9447-90

Br4:RJBasso

date: SEP 05 1990

to: District Counsel, Denver SW:DEN
Attn: D. Mungo

from: Assistant Chief Counsel (Tax Litigation) CC:TL

subject: [REDACTED]

This memorandum responds to your request dated August 9, 1990 for formal tax litigation advice regarding the overpayment issue in the above-entitled case.

ISSUE

Whether I.R.C. §§ 6512(b)(3) and 6511(b)(2) bar petitioner from obtaining a credit or refund for overpayments related to the taxable years [REDACTED] and [REDACTED].

CONCLUSION

After a petition has been filed, the Tax Court obtains exclusive jurisdiction to make the determination of whether there is a deficiency or an overpayment. I.R.C. § 6512(a). If the Court holds that under the provisions of I.R.C. §§ 6512(b)(3) and 6511(b)(2) petitioner is not entitled to a credit or refund, then this result cannot be changed by the subsequent late filing of petitioner's original tax returns.

DISCUSSION

We will not repeat the analysis of the application of I.R.C. §§ 6512(b)(3) and 6511(b)(2) in light of the extensive discussion contained in your incoming request for formal tax litigation advice. We have addressed this same overpayment issue before and we have enclosed a copy of our November 21, 1986 formal tax litigation advice in Evans v. Commissioner, Dkt. No. 46004-85S, for your guidance. Despite what may appear to be an inequitable result, petitioner is barred from receiving a credit or refund for an overpayment by virtue of the controlling provisions of I.R.C. §§ 6511(b)(3) and 6511(b)(2).

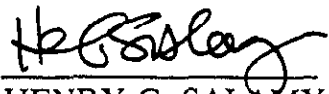
Although we have been unable to find any case which has considered the issue in terms of Rev. Rul. 76-511, 1976-2 C.B. 428, two recent Tax Court cases support our position. See Hall v. Commissioner, T.C. Memo 1989-651 and Morin v. Commissioner, T.C. Memo 1990-404. Under the circumstances of the instant case,

09362

we agree with your conclusion that petitioner is not entitled to a credit or refund for an overpayment for the years [REDACTED] and [REDACTED]

If you have any questions or need further assistance in this matter please contact Robert J. Basso at FTS 566-3308.

MARLENE GROSS
Assistant Chief Counsel
(Tax Litigation Division)

By: 
HENRY G. SALAMY
Chief, Branch No. 4
Tax Litigation Division

Enclosure:

